

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

v.

DUANE L. ROLLINS,

Defendant

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ID#1212010904

Submitted: January 17, 2018

Decided: March 14, 2018

On Defendant's Motion for Postconviction Relief. **DENIED.**

ORDER

Andrea L. Johnson, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Duane Rollins, James T. Vaughn Correctional Institution, Smyrna, Delaware, *pro se*.

COOCH, R.J.

This 14th day of March 2018, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. On September 4, 2013, Defendant pled guilty to two counts of Strangulation.¹ "As part of the plea agreement, the State indicated that it would seek to declare [Defendant] a habitual offender under 11 *Del. C.* § 4214(a) on the second count of Strangulation, but would waive proceeding against [Defendant] as a habitual offender on the first count of Strangulation."² Defendant was incorrectly advised at the time of the plea that the second count was subject to a minimum mandatory five-

¹ 11 *Del. C.* § 607.

² *Rollins v. State*, 2015 WL 5032041, at *1 (Del. Aug. 25, 2015).

year sentence. At sentencing by another judge, the Court declared Defendant a habitual offender as to the second count of strangulation, and sentenced him to fifteen years at Level V supervision as to the second count, and five years Level V as to the first count.

2. Defendant appealed his sentence to the Delaware Supreme Court. In his appeal, Defendant argued that the Court, his trial counsel, and the prosecutor mistakenly had characterized Strangulation as a violent offense under 11 *Del. C.* § 4201(c), and improperly had required a minimum mandatory sentence of five years at Level V supervision.³ “The State agreed and filed a motion to remand for resentencing.”⁴ As this court later noted in its decision denying Defendant’s later request to withdraw his guilty plea, “[t]his case is unusual in that Defendant wishe[d] to withdraw his guilty plea although he ultimately got a better deal (in terms of any minimum mandatory sentence to which he would be subject) than he originally bargained for”⁵ since the State in the original plea agreement had agreed to *nolle prosequi* the companion Assault Second Degree, which would have subjected Defendant, if convicted of same and then sentenced as an habitual offender, to an *eight-year* minimum mandatory Level V sentence.
3. Defendant filed a motion to withdraw his guilty plea on June 10, 2014. Defendant argued that his guilty plea was not knowing, intelligent, and voluntary because of the mistaken belief that Strangulation was a violent offense, requiring a minimum of five years at Level V supervision. On July 31, 2014, Defendant filed a *pro se* motion to dismiss his trial counsel and for appointment of new counsel. On August 7, Defendant’s trial counsel filed a motion to withdraw. On August 22, 2014, this Court denied all of the pending motions.
4. On January 16, 2015, Rollins was resentenced. The Court declared Defendant a habitual offender as to the second count of Strangulation, and sentenced him to fifteen years at Level V supervision on that count. The Court sentenced Defendant to five years at Level V supervision on the first count, suspended after two years for decreasing levels of supervision. Defendant appealed his motion to withdraw his guilty plea

³ *Id.*

⁴ *Id.*

⁵ *State v. Rollins*, I.D. 1212010904, at 5 (Del. Super. Ct. Aug. 22, 2014) (ORDER), D.I. 56.

and his sentence to the Delaware Supreme Court. The Delaware Supreme Court affirmed this Court's rulings.⁶

5. On August 25, 2016, Defendant filed *pro se* the instant motion, which is his first and timely Motion for Postconviction Relief. Some of the fifteen grounds for relief identified in his motion appear to allege ineffective assistance of counsel. On October 11, 2016, Defendant filed his first Motion for Appointment of Counsel. Due to a lack of response from this Court, Defendant filed a second Motion for Appointment of Counsel on December 28, 2016. This Court denied Defendant's two motions for appointment of counsel on March 3, 2017.
6. In his motion, Defendant raises fifteen grounds for relief, which read below:

Ground #1: Direct appeal counsel was ineffective for failing to [c]ite trial counsel's ineffectiveness.

Supporting Facts: Counsel's representation on direct appeal filing of non merit brief was inadequate to meet the Supreme Court standard set in *Anders* [sic], and was done to cover up trial counsel's ineffectiveness (A) mislead movant on the conditions of his plea, and (B) conceived argument on direct appeal to hide it. *See Grubbs*, 900 F. Supp 435 (1998).

Ground #2: Trial court committed reversible error by not allowing the plea withdrawal.

Supporting Facts: The record shows that the trial court incorrectly ruled on the movant's prior motion to withdraw his plea under *Patterson*, 684 A.2d 1234 (1996). Delaware Supreme Court made it clear that the trial court does not have a "balancing" criteria under Rule 32(d) and that any "fair and just" reason has been shown by defendant seeking to withdraw a guilty plea. Do not lend themselves to a "balancing" analysis which was incorporated by this court *Id.* 684 A.2d at 1238-39.

Ground #3: Trial counsel ineffective.

Supporting Facts: Counsel failed to research the possibility of the[re] being serious mental illness. As a result of proneness to

⁶ *Rollins*, 2015 WL 5032041, at *4 (holding that there was no defect in Defendant's guilty plea procedure, that Defendants' appellate counsel had not provided ineffective assistance on appeal, and that Defendants' sentence as a habitual offender under 11 *Del. C.* § 4214(a) did not violate his due process rights under the plain error standard).

violence at a young age there never was an investigation by trial counsel concerning the aforementioned issue.

Ground #4: Counsel refused to file a motion to withdraw guilty plea.
Supporting Facts: Trial counsel's refusal to file a motion to withdraw guilty plea or advise court of movant's desire to do same violated movant's constitutional rights and caused immediate prejudice. Counsel's deficient performance affected the outcome of the proceedings.

Ground #5: Constructive denial of counsel.
Supporting Facts: Attorney-client relationship was so poor, counsel was unable to prepare a defense. Counsel relied solely on defendant taking a plea instead of challenging the state's case.

Ground #6: Right to due process violation.
Supporting Facts: Courts may grant several different kinds of remedies for a Due Process violation if a conviction was unlawfully obtained. Here defendant's constitutional right to Due Process was violated because the violation not only involved a mistake, but also that the mistake undermined the fundamental, legality, reliability, integrity, and fairness of the proceedings leading to his conviction.

Ground #7: Abuse of discretion.
Supporting Facts: Honorable Richard R. Cooch abused his discretion by not allowing defendant to withdraw his guilty plea or an evidentiary hearing to determine why defendant plead guilty under false premises. The cumulative impact of the deficiencies constitutes reversible error.

Ground #8: Failure to challenge career/habitual offender enhancement.
Supporting Facts: Counsel was ineffective for not objecting to career offender enhancements; conviction for strangulation because it wasn't a crime of violence.

Ground [#9]: 14th Amendment.
Supporting Facts: Defendant was denied equal protection of the law when he was not given an opportunity to an evidentiary hearing to correct the mistakes concerning his plea-agreement and the conflict of interest with his trial attorney.

Ground [#10]: Plain Error.
Supporting Facts: Plain error is limited to material defects which are apparent on the face of the record which are basic, serious, fundamental in their character, mis-informing defendant of his

procedural defect plea, was an error that was so serious his conviction should not stand. Defendant was deprived of a substantial right.

Ground [#11]: Attorney-client privilege violation.

Supporting Facts: In confidence of protection of attorney client privilege defendant showed counsel letters that the “alleged victim” constantly wrote to him. Defendant’s counsel took these letters and showed them to the state against Defendant’s wishes, which are not admissible because “victim” didn’t testify as to the truth of these statements. But actually it made defendant look guilty to the accused crimes instead of challenging the state’s case. *See Damone Flowers v. State of Delaware*. A constitutional violation occurred where statements were admitted without proper foundation, which falls under the section 3507 statements.

Ground [#12]: Actual innocence.

Supporting Facts: Original police report pg #8 and #9 Exhibit A, Police refused to file charges against alleged victims for attacking defendant and refused to provide pictures that they photographed when it was clear that I had visible injuries from them attacking me. Photos were never submitted into evidence. Police refused to photograph other injuries consistent with me being strangled and assaulted they both attacked me the same time.

Ground [#13]: Prosecutorial mis-conduct [sic].

Supporting Facts: The state admitted that defendant had a procedural defect in his plea. The state also admitted that defendant did not knowingly and voluntarily take the plea. The plea was defective in violation of defendant’s constitutional rights. The burden is on the state to make sure defendant does not plea under false premises.

Ground [#14]: Conflict of interest.

Supporting Facts: Counsel created a conflict of interest by engaging in unethical unprofessional conduct.

Ground [#15]: Miscarriage of justice.

Supporting Facts: The contract was defective which would be null and void. If that were not the case the[re] would have been no need for the Supreme Court to vacate and remand for re-sentencing in order to correct the error, but the error was only covered up not corrected, lower court denied defendant’s humble request to take his plea back before re-sentencing.⁷

⁷ Def.’s Mot. for Postconviction Relief at 6-9.

7. Rule 61 is the remedy for defendants “in custody under a sentence of this court seeking to set aside the judgment of conviction”⁸ This Court “must first consider the procedural requirements of Rule 61 before addressing any substantive issues.”⁹ The procedural bars of Rule 61 include timeliness,¹⁰ successiveness,¹¹ procedural default,¹² and former adjudication.¹³ A motion is untimely if it is filed more than one year after the conviction is finalized or defendant asserts a new constitutional right that is retroactively applied more than one year after it is first recognized.¹⁴ A motion is successive if it is a “second or subsequent motion.”¹⁵ If any of these bars apply, the movant must show entitlement to relief under Rule 61(i)(5).¹⁶ The contentions in a Rule 61 motion must be considered on a “claim-by-claim” basis.¹⁷
8. Defendant filed this motion within one year after his conviction became final on August 25, 2015. Also, this is Defendant’s first motion for postconviction relief. Thus, this motion is not barred as untimely or successive. However, Defendant’s Grounds Two, Seven, Nine, Ten, and Fifteen are procedurally barred as formerly adjudicated pursuant to Del. Super. Ct. Crim. R. 61(i)(4). Defendant’s second, seventh, ninth, tenth, and fifteenth grounds for relief are claims that this Court committed error or abused its discretion at his first sentencing hearing and when it denied his motion to withdraw the guilty plea. Defendant raised these claims on appeal and the Delaware Supreme Court affirmed this Court’s judgment.¹⁸ As Grounds Two, Seven, Nine, Ten, and Fifteen have been “formerly adjudicated . . . in the proceedings

⁸ Del. Super. Ct. Crim. R. 61.

⁹ *State v. Stanford*, 2017 WL 2484588, at *2 (Del. Super. Ct. June 7, 2017) (quoting *Bradley v. State*, 135 A.3d 748, 756 (Del. 2016)).

¹⁰ *Id.* at 2 (citing Del. Super. Ct. Crim. R. 61(i)(1)).

¹¹ *Id.* at 2 (citing Del. Super. Ct. Crim. R. 61(i)(2)).

¹² *Id.* at 2 (citing Del. Super. Ct. Crim. R. 61(i)(3)).

¹³ *Id.* at 2 (citing Del. Super. Ct. Crim. R. 61(i)(4)).

¹⁴ Del. Super. Ct. Crim. R. 61(i)(1).

¹⁵ Del. Super. Ct. Crim. R. 61(i)(2).

¹⁶ *Stanford*, WL 2484588, at *2.

¹⁷ *State v. Reyes*, 155 A.3d 331, 342 n.15 (Del. 2017) (holding that “Rule 61 analysis should proceed claim-by-claim, as indicated by the language of the rule.”).

¹⁸ *Rollins v. State*, 2015 WL 5032041, at *3 (“[W]e conclude that the Superior Court did not err in finding Rollins was not prejudiced by his trial counsel’s mistake regarding the minimum mandatory sentence and in denying the motion to withdraw the guilty plea.”).

leading to the judgment of conviction [or] in an appeal [they are] barred.”¹⁹

9. In Defendant’s sixth ground for relief, he alleges a due process violation during his first sentencing hearing and when the Court denied his motion to withdraw the guilty plea. Ground six is also procedurally barred as formerly adjudicated pursuant to Del. Super. Ct. Crim. R. 61(i)(4). First, as to the sentencing hearing, any potential prejudice to Defendant was cured when the case was remanded and Defendant was resentenced. Second, as to this Court’s denial to withdraw the guilty plea, any potential prejudice to Defendant was cured when the Delaware Supreme Court found no error and affirmed.²⁰ Therefore, Ground six is procedurally barred as formerly adjudicated.
10. Defendant also raises seven claims of ineffective assistance of counsel.²¹ To support a claim of ineffective assistance of counsel, a defendant must demonstrate counsel’s deficiency as measured by an objective level of reasonableness and that the deficiency deprived defendant of a fair trial with reliable results such that there exists a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.²² “[R]easonable probability is a probability sufficient to undermine confidence in the outcome.”²³ “Mere allegations of ineffectiveness will not suffice. A defendant must make specific allegations of actual prejudice and substantiate them.”²⁴ “[A] court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance[.]”²⁵ If a defendant fails to demonstrate one of the two *Strickland* prongs, the Court need not address the other prong.

¹⁹ Del. Super. Ct. Crim. R. 61(i)(4).

²⁰ *Rollins*, 2015 WL 5032041, at *3-4.

²¹ Def.’s Mot. for Postconviction Relief at 6-9 (specifically, Claims #1, #3, #4, #5, #8, #11, and #14).

²² *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

²³ *Strickland*, 466 U.S. at 694.

²⁴ *Brathwaite*, 2014 WL 4352170, at *4 (quoting *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996)).

²⁵ *Strickland*, 466 U.S. at 689 (1984).

11. Defendant alleges his first ineffective assistance of counsel claim in Ground one in which he states, “appeal counsel was ineffective for failing to [c]ite trial counsel’s ineffectiveness . . . and was done to cover up trial counsel’s ineffectiveness”²⁶ Defendant fails to demonstrate either of the *Strickland* prongs in this claim. Defendant’s appellate counsel represented by sworn affidavit that he “summarize[d] the trial evidence, significant legal applications and rulings, and provide[d] the defendant the opportunity to state to the [Delaware] Supreme Court what he believes are legal issues that [appellate] counsel should have raised on appeal.”²⁷ The Delaware Supreme Court, in its August 25, 2015 decision, concluded that Defendant’s appellate counsel “made a conscientious effort to examine the record and the law and has properly determined that [Defendant] could not raise a meritorious claim in this appeal.”²⁸ The Delaware Supreme Court, in affirming this Court’s denial to withdraw Defendant’s guilty plea, also held that Defendant’s “appeal [wa]s wholly without merit and devoid of any arguably appealable issue.”²⁹ This Court finds that Defendant has failed to demonstrate in Ground one a cause for relief under either of the two *Strickland* prongs.
12. Second, Defendant alleges in Ground Three that trial “counsel failed to research the possibility of the[re] being serious mental illness, as a result of proneness to violence at a young age”³⁰ This allegation fails to portray a sub-standard level of representation by trial counsel because trial counsel did, in fact, “request[] and receive[] a psycho-forensic evaluation mitigation report . . . and [was] unaware of any viable mental health defense as a result of Defendant’s claim that he had ‘proneness to violence’ at ‘a young age[.]’”³¹ This Court is satisfied with trial counsel’s representation as to Ground Three and finds no ineffective assistance of counsel.
13. Third, Defendant argues in Ground Four that trial “counsel refused to file a motion to withdraw guilty plea . . . or advise Court of movant’s

²⁶ Def.’s Mot. for Postconviction Relief at 6.

²⁷ Appellate Counsel Affidavit, D.I. 77.

²⁸ *Rollins*, 2015 WL 5032041, at *4.

²⁹ *Id.*

³⁰ Def.’s Mot. for Postconviction Relief at 6.

³¹ Trial Counsel Response Affidavit, D.I. 74.

desire to do the same.”³² As to this ground for relief, Defendant fails to demonstrate a basis for an ineffective assistance of counsel claim because “[d]efense trial counsel filed a Motion for Retraxit of Guilty Plea at Defendant’s request on June 9, 2014 as is noted in the court docket[.]”³³ Thus, Defendant’s ineffective assistance of counsel claim as to Ground Four fails.

14. Fourth, in Ground Five, Defendant asserts that his “[a]ttorney-client relationship was so poor, counsel was unable to prepare a defense.”³⁴ Defendant fails to make specific, substantiated allegations of actual prejudice here. Defendant has merely alleged ineffectiveness in a conclusory manner here, which will not suffice. Moreover, trial counsel’s statements that she “met with Defendant on numerous occasions in order to discuss and prepare his case[]” are sufficient for this Court to presume that trial counsel’s conduct fell within the wide range of reasonable professional assistance.³⁵ Accordingly, Defendant’s ineffective assistance of counsel claim fails as to Ground Five.
15. Fifth, Defendant claims in Ground Eight that trial counsel failed to “challenge career/habitual offender enhancement. . . . Conviction for Strangulation . . . wasn’t a crime of violence.”³⁶ Ground Eight is procedurally barred as formerly adjudicated pursuant to Del. Super. Ct. Crim. R. 61(i)(4). In its August 25, 2015 opinion, the Delaware Supreme Court addressed this argument when it stated, “[t]o the extent [Defendant] is arguing that he could not be declared a habitual offender because Strangulation is not a violent felony under Section 4201(c), he is incorrect.”³⁷ The Delaware Supreme Court continued by stating, “[t]he fact that Strangulation was not a violent felony under Section 4201(c) meant that the Superior Court was not required to impose a minimum mandatory Level V sentence of five years for the second count of Strangulation under Section 4214(a), not that [Defendant] was ineligible for habitual offender status.”³⁸ As such,

³² Def.’s Mot. for Postconviction Relief at 6.

³³ Trial Counsel Response Affidavit, D.I. 74.

³⁴ Def.’s Mot. for Postconviction Relief at 6.

³⁵ Trial Counsel Response Affidavit, D.I. 74.

³⁶ Def.’s Mot. for Postconviction Relief at 7.

³⁷ *Rollins*, 2015 WL 5032041, at *4.

³⁸ *Id.*

as to Ground Eight, Defendant's argument is procedurally barred as formerly adjudicated pursuant to Del. Super. Ct. Crim. R. 61(i)(4).

16. Sixth, Defendant alleges in Ground Eleven that trial counsel violated the attorney-client privilege when trial "counsel took [letters sent to Defendant from the 'alleged victim'] and showed them to the State against Defendant's wishes[.]"³⁹ Defendant fails to demonstrate an ineffective assistance of counsel claim because trial counsel stated that

Defendant provided letters written to him by the alleged victim to trial defense counsel so that defense counsel could show them to [the State] to rebut the allegation that the alleged victim was frightened of him and posed a danger to her and her children and as evidence that the alleged victim continued to have contact with Defendant while he was incarcerated[.]⁴⁰

Defendant fails to show how this is anything other than objectively reasonable trial strategy. Nor can he show that there is a reasonable probability that, but for his trial counsel's alleged unprofessional errors, the result of his proceeding would have been different. Therefore, Defendant's ineffective assistance of counsel claim as to Ground eleven fails.

17. In his final ineffective assistance of counsel claim, Defendant contends in Ground Fourteen that "[c]ounsel created a conflict of interest by engaging in unethical unprofessional conduct."⁴¹ Trial counsel denies this allegation.⁴² As with Ground Five, Defendant fails to make specific, substantiated allegations of actual prejudice here. Rather, Defendant has made mere conclusory allegations. Without more, Defendant's ineffective assistance of counsel claim alleging a conflict of interest in Ground Fourteen fails. Therefore, Defendant's six ineffective assistance of counsel claims fail for the reasons stated.
18. Defendant also makes a claim of actual innocence in Ground Twelve whereby he argues that

³⁹ Def.'s Mot. for Postconviction Relief at 8.

⁴⁰ Trial Counsel Response Affidavit, D.I. 74.

⁴¹ Def.'s Mot. for Postconviction Relief at 9.

⁴² Trial Counsel Response Affidavit, D.I. 74.

“[the] original police report pg #8 and #9 Exhibit A, Police refused to file charges against alleged victims for attacking Defendant and refused to provide pictures that they photographed when it was clear that [he] had visible injuries from them attacking me. Photos were never submitted into evidence. Police refused to photograph other injuries consistent with [Defendant] being strangled and assaulted[.] [T]hey both attacked [him] the same time.”⁴³

“[A] voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea[.]”⁴⁴ In reviewing Defendant’s appeal, the Delaware Supreme Court found that Defendant knowingly, intelligently, and voluntarily entered into his guilty plea, that Defendant understood that he waived certain rights, and that Defendant was bound by his guilty plea colloquy.⁴⁵ As such, Defendant waived claims of error of defect in his plea.

19. Defendant’s final claim in his motion for postconviction relief appears in Ground Thirteen where he argues “[p]rosecutorial misconduct” because “the state admitted that defendant had a procedural defect in his plea.”⁴⁶ Along with many of the above grounds for relief, Defendant’s argument is procedurally barred as formerly adjudicated pursuant to Del. Super. Ct. Crim. R. 61(i)(4). Defendant raised this argument in his appeal and the Delaware Supreme Court affirmed. In its opinion, the Delaware Supreme Court reviewed “whether there was a procedural defect in taking the plea” in determining if Defendant had carried his “burden of showing a fair and just reason to permit withdrawal of his plea.”⁴⁷ The Delaware Supreme Court found no prejudice to Defendant and concluded, “that the Superior Court did not err in finding Rollins was not prejudiced by his trial counsel’s mistake regarding the minimum mandatory sentence and in denying the motion to withdraw the guilty plea.”⁴⁸ Therefore, Defendant’s claim under Ground Thirteen is procedurally barred as formerly adjudicated pursuant to Del. Super. Ct. Crim. R. 61(i)(4).

⁴³ Def.’s Mot. for Postconviction Relief at 8.

⁴⁴ *Cooper v. State*, 954 A.2d 909, at *2 (Del. 2008).

⁴⁵ *Rollins*, 2015 WL 5032041, at *3.

⁴⁶ Def.’s Mot. for Postconviction Relief at 8.

⁴⁷ *Rollins*, 2015 WL 5032041, at *3.

⁴⁸ *Id.*

20. Defendant fails to demonstrate a basis for recovery pursuant to Del. Super. Ct. Crim. R. 61 in his fifteen grounds for relief. Accordingly, Defendant's Motion for Postconviction Relief is **DENIED**.

IT IS SO ORDERED.



Richard R. Cooch, J.

cc: Prothonotary
Investigative Services